

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11968 of 2015

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1. Goumukhi Devi Wife of Late Ram Prasad Ojha, D/o Late Ramji Pathak, Resident of village- Kharika, P.S.- Lar, District- Dewariya (U.P.), At Present village- Manjhauli Chowk, P.S.- Mairwa, District- Siwan

2. Dhananjay Pandey

3. Vijay Pandey

4. Sanjay Pandey

5. Arbind Pandey All 2 to 5 sons of late Vishwanath Pandey, Resident of Village- Mudwar, P.S.- Bankata, District- Dewariya (U.P.). At present Village Manjhauli, P.S.- Mairwa, District- Siwan

.... Petitioner/s

Versus

1. Mohan Prasad Srivastava, Son of Late Ramraksha Lal

2. Raj Kumar Srivastava, Son of Mohan Prasad Srivastava, Both 1 and 2 residents of village Mairwa, Manjhauli Road, P.S. Mairwa, District- Siwan

3. Bhola Pathak

4. Mohan Pathak @ Braj Mohan Pathak

5. Akhilesh Pathak All 3 to 5 sons of Late Ramji Pathak, resident of village- Mairwa Manjhauli Road, P.O. and P.S. Mairwa, District- Siwan

6. Ashok Kumar Srivastava, Son of Shankar Prasad, Resident of village- Mairwa Manjhauli Road, P.O. and P.S. Mairwa, District- Siwan

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arvind Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

ORAL ORDER

2 04-05-2016 Heard Mr. Arvind Kumar, learned counsel for the petitioner.

2. The application under Article 227 of the Constitution has been filed for setting aside the order dated 18.03.2015 passed in Title Suit no. 253 of 2006 by Sub Judge-V, Siwan.

3. It appears that the aforesaid suit was filed by the plaintiff/respondent for removal of the encroachment from the suit

property after declaration of title. The present petitioners filed intervention application under order 1 rule 10 C.P.C. on the ground that the petitioner is sister of the plaintiff and the other interveners are the sons of the petitioner no.1. The court below by the impugned order held that this is the case of encroachment therefore, the defendants, who have encroached the suit property, have been made party. The question to be decided is as to whether the defendants have encroached the property or not and for deciding this question, the presence of the petitioners, who claimed to be the co-sharer with the plaintiff, is not required. If the petitioners have got any share in the property, they are at liberty to move before appropriate forum for carving out their share, but, certainly in the present suit, for deciding the question of removal of encroachment, their presence is not at all necessary.

5. In view of the above, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction.

6. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

siddharth/-

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